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April 4, 2018

The Honorable James O. Browning
United States District Court for
the District of New Mexico
333 Lomas Boulevard, N.W., Suite 660
Albuquerque, New Mexico 87102

VIA FACSIMILE

Re: United States v. Billy Garcia, et al., 15-CR-4268-JB (Witness Leroy Lucero)

Dear Judge Browning:

I am writing as counsel for Leroy Lucero to notify Your Honor about the subpoena Mr. Lucero received to appear tomorrow and various related circumstances.

As Your Honor knows, the Court appointed me to represent Mr. Lucero in another matter and extended that appointment to include representing Mr. Lucero as a potential witness in this matter. Mr. Lucero appeared before the Court on March 16, 2018, and declined to provide substantive testimony based on his Constitutional right not to be a witness against himself. In addition, I notified the Court and the parties that I intended to advise Mr. Lucero to continue to assert this Constitutional right unless and until he received statutory immunity.

Thereafter, the Government declined to grant Mr. Lucero statutory immunity. Mr. Lucero decided nonetheless to agree to meet with Counsel for the Government and testify as a prosecution witness. Counsel for Mr. Garcia then issued a subpoena to Mr. Lucero commanding him to appear tomorrow, April 5, 2018. Pursuant to the agreement reached in open Court on March 16th, I accepted service of that subpoena for Mr. Lucero.

Absent contrary instructions from the Court or Mr. Garcia's counsel, Mr. Lucero will appear tomorrow as commanded. Unfortunately, I am not available to attend, because I am scheduled for oral surgery. However, given the developments in the case since March 16th and in particular Mr. Lucero's decision to agree to testify as a witness for the prosecution without immunity, Mr. Lucero is looking to the Government for direction as its witness rather than to me for advice on the scope of his Constitutional rights. Therefore, Mr. Lucero and I agree that my attendance at tomorrow's hearing is not necessary. Similarly, Mr. Lucero and I do not believe that my attendance at trial next week is necessary either.

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The Honorable James O. Browning
April 4, 2018 – page 2

Accordingly, I respectfully request that the Court excuse my nonappearance both tomorrow and at trial. If, however, the Court would like me either to attend the trial next week or be available by telephone tomorrow before my surgery when the proceedings commence, I would appreciate it if the Court would alert me.

Thank you.

Respectfully submitted,


Gregg Vance Fallick

cc: James Castle, Esquire (via e-mail)
Robert Cooper, Esquire (via e-mail)
Randy Castellano, Esquire (via e-mail)
Maria Armijo, Esquire (via e-mail)
Matthew Beck, Esquire (via e-mail)